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U.S. Department of Justice

From page
Pemberton

United States Attorney
Western District of Missouri
(816) 374-3122

ETS 758-3122

549 United States Courthouse
811 Grand Avenue
Kansas City, Missouri 64106

October 20, 1986

REC'D.

OCT 21 1986

Bryan G. Redd
Trial Attorney
Environmental Enforcement
Land and Natural Resources Div.
10th and Pennsylvania Avenue N.W.
Washington, D.C. 20530

**CONS
XIN IN WATER**

Re: United States of America v. Walter C. Carolyn
et al., Civil No. 86-1174-CV-W-9

Dear Mr. Redd:

Enclosed herewith please find a copy of the Complaint
filed this date in the subject matter.

Yours very truly,

ROBERT G. ULRICH
United States Attorney

By *Vernon A. Poschel* /JB

VERNON A. POSCHEL
Assistant United States Attorney

VAP:jb

Enclosure

cc:

David Tripp
Regional Counsel
Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

0780 30390761 52



Superfund

10/20/86

SUMMONS IN A CIVIL ACTION

United States District Court	DISTRICT Western, Missouri
UNITED STATES OF AMERICA	DOCKET NO. 86-1174-CV-W-9
<p style="text-align: center;">v.</p> WALTER C. CAROLAN; MARTHA C. ROSE CHEMICALS, INC., AMERICAN STEEL WORKS, INC., AND W. C. CAROLAN CO. INC.	TO: (NAME AND ADDRESS OF DEFENDANT) Walter C. Carolan, Registered Agent 2459 Charlotte St., Kansas City, Missouri

YOU ARE HEREBY SUMMONED and required to serve upon

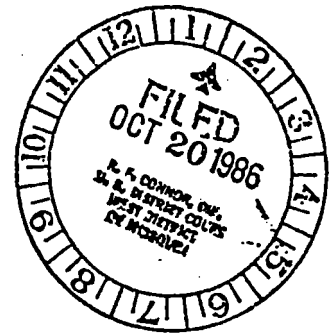
PLAINTIFF'S ATTORNEY (NAME AND ADDRESS)

Vernon A. Poschel
Assistant United States Attorney
549 United States Courthouse
811 Grand Avenue
Kansas City, Missouri 64106
(816) 374-3122

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK R. F. Connor	DATE OCT 20 1986
(BY) DEPUTY CLERK J. Dudley	

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION



UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

COMPLAINT

86-1174 CV-W-9

WALTER C. CAROLAN;
MARTHA C. ROSE CHEMICALS, INC.;
AMERICAN STEEL WORKS, INC.;
and, W. C. CAROLAN COMPANY, Inc.,

Defendants.

Plaintiff United States of America, on behalf of the
Administrator of the United States Environmental Protection Agency
(hereinafter "EPA"), alleges the following:

INTRODUCTION

1. This is a civil action for injunctive relief brought pursuant to Sections 16 and 17 of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629 (1982 & Supp. II 1984) (hereinafter "TSCA").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 15 U.S.C. § 2616 and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Pursuant to 15 U.S.C. § 2616(a)(2) and 28 U.S.C. § 1391(b),(c), venue is proper in the Western District of Missouri because the defendants reside and are doing and/or transacting business in this district and the acts, omissions or transactions constituting violations occurred in this district.

4. Pursuant to 11 U.S.C. §362(b)(3),(4), this action is not stayed by the pending bankruptcy matter In re Martha C. Rose Chemicals, Inc., No. 86-02787-2 (Bankr. W.D. Mo.).

DEFENDANTS

5. At all times relevant to this complaint, defendant Martha C. Rose Chemicals, Inc., a Missouri corporation, has been an owner and/or operator of a facility located at 500 West McKissock, Holden, Missouri (hereinafter "Holden facility") at which polychlorinated biphenyls (hereinafter "PCBs") have been handled, stored, treated and/or disposed since on or about January 1982. The administrative office of Martha C. Rose Chemicals, Inc. is located at 2459 Charlotte Street, Kansas City, Missouri.

6. At all times relevant to this complaint, defendant American Steel Works, Inc., a Kansas corporation, has been an owner and/or operator of the Holden facility. The Missouri administrative office of American Steel Works, Inc. is located at 2459 Charlotte Street, Kansas City, Missouri.

7. At all times relevant to this complaint, defendant W.C. Carolan Company, Inc., a Missouri corporation, has been an owner and/or operator of the Holden facility. The administrative office of W.C. Carolan Company, Inc. is located at 2459 Charlotte Street, Kansas City, Missouri.

8. At all times relevant to this complaint, defendant Walter C. Carolan has been the chief executive officer, president and sole stockholder of American Steel Works, Inc. and W.C. Carolan

Company, Inc. and the chief executive officer, president and majority stockholder of Martha C. Rose Chemicals, Inc. and has controlled, managed and/or directed the PCB-related activities of the above-named corporations at the Holden facility. At all times relevant to this complaint, defendant Walter C. Carolan has been an owner and/or operator of the Holden facility.

9. Each of the defendants Walter C. Carolan, Martha C. Rose Chemicals, Inc., American Steel Works, Inc. and W.C. Carolan Company, Inc. (hereinafter "defendants") is a "person" as that term is defined in 40 C.F.R. § 761.3.

THE HOLDEN FACILITY

10. Since on or about January 1982, the defendants have owned and/or operated the Holden facility to, inter alia, process PCB transformers and PCB capacitors for disposal and to decontaminate PCB mineral oil dielectric fluids.

11. By virtue of their processing, distribution in commerce, use and/or disposal of "PCBs" and/or "PCB Items" (as those terms are defined in 40 C.F.R. § 761.3) at the Holden facility, at all times relevant to this complaint defendants Martha C. Rose Chemicals, Inc., American Steel Works, Inc. and W. C. Carolan Company, Inc. have been and continue to be subject to the requirements of TSCA and 40 C.F.R. Part 761.

12. By virtue of his control, management and/or direction of the PCB-related activities of Martha C. Rose Chemicals, Inc.,

American Steel Works, Inc. and W. C. Carolan Company, Inc. at the Holden facility, at all times relevant to this complaint defendant Walter C. Carolan has been and continues to be subject to the requirements of TSCA and 40 C.F.R. Part 761.

13. Pursuant to TSCA Section 16(a), 15 U.S.C. § 2615(a), on or about February 25, 1985 the EPA issued an administrative Complaint and Notice of Opportunity for Hearing, TSCA Docket No. VII-84-T-331, against Martha C. Rose Chemicals, Inc. which alleged violations at the Holden facility of federal regulations pertaining to the processing, use, distribution in commerce, disposal, storage and marking of PCBs.

14. On September 27, 1985 the above-referenced administrative Complaint was resolved by a Consent Agreement and Final Order. By Walter C. Carolan, Martha C. Rose Chemicals, Inc. agreed, inter alia, to comply with the applicable PCB regulations, to revise its PCBs inventory system and pay a \$94,200 civil penalty, \$48,200 of which was deferred contingent on compliance with the terms of the Consent Agreement and the \$46,000 balance was to be paid in installments.

15. Defendant Martha C. Rose Chemicals, Inc. has violated the terms of the above-referenced Consent Agreement and Final Order because, inter alia, it has not revised its PCB inventory system and its civil penalty installment payments are in arrears.

FIRST CLAIM FOR RELIEF

16. Plaintiff realleges paragraphs 1 through 15 above as if set forth below.

17. In the operation of the Holden facility, defendants "store for disposal" "PCBs" at concentrations of 50 ppm or greater and "PCB Items" with PCB concentrations of 50 ppm or greater, as those terms are defined in 40 C.F.R. § 761.3.

18. In the operation of the Holden facility, defendants store for disposal non-liquid PCBs in "PCB Containers" (as that term is defined in 40 C.F.R. § 761.3) which must comply with the specifications set forth in 49 C.F.R. §§ 178.80, 178.82, 178.115, pursuant to 40 C.F.R. § 761.65(c)(6).

19. Defendants have violated and continue to violate 40 C.F.R. § 761.65(c)(6) and Sections 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e), 2614, by storing for disposal non-liquid PCBs in PCB containers which do not comply with the specifications of 49 C.F.R. §§ 178.80, 178.82, 178.115.

20. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

SECOND CLAIM FOR RELIEF

21. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.

22. In the operation of the Holden facility, defendants "store for disposal" "PCBs" at concentrations of 50 ppm or greater and "PCB items" with PCB concentrations of 50 ppm or greater, as those terms are defined in 40 C.F.R. § 761.3.

23. In the operation of the Holden facility, defendants store for disposal "PCB Articles" and/or "PCB Containers" (as those terms are defined in 40 C.F.R. § 761.3) which must be dated when they are placed in storage, pursuant to 40 C.F.R. § 761.65(c)(8).

24. Defendants have violated and continue to violate 40 C.F.R. § 761.65(c)(8) and Sections 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e), 2614, by storing PCB Articles and/or PCB Containers which do not bear storage dates.

25. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 42 U.S.C. § 2616.

THIRD CLAIM FOR RELIEF

26. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.

27. In the operation of the Holden facility, defendants "store for disposal" "PCBs" at concentrations of 50 ppm or greater and "PCB Items" with PCB concentrations of 50 ppm or greater, as those terms are defined in 40 C.F.R. § 761.3.

28. As the owners and/or operators of the Holden facility which is used for the storage of PCBs and PCB items designated for disposal, defendants are subject to the facility requirements set forth in 40 C.F.R. § 761.65(b)(1).

29. Defendants have violated and continue to violate 40 C.F.R. § 761.65(b)(1)(ii),(iii) and Section 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e), 2614, by failing to have an adequate floor which has continuous curbing with a minimum six inch high curb with no openings that would permit liquids to flow from the curbed area.

30. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

FOURTH CLAIM FOR RELIEF

31. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.

32. In the operation of the Holden facility, defendants store PCB containers with PCB concentrations at 50 ppm or greater.

33. As a result of the storage of PCB containers with PCB concentrations at 50 ppm or greater, defendants have been subject to the facility requirements of 40 C.F.R. § 761.65, pursuant to 40 C.F.R. § 761.60(c)(3).

34. Defendants have violated and continue to violate 40 C.F.R. § 761.(c)(3) and Sections 6(e) and 15 of TSCA, 15 U.S.C.

§§ 2605(e), 2614, by storing PCB containers in uncurbed areas which do not comply with the facility requirements of 40 C.F.R. § 761.65.

35. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

FIFTH CLAIM FOR RELIEF

36. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.

37. Pursuant to 40 C.F.R. § 761.40(a), defendants have been required to mark all the PCB containers at the Holden facility in accordance with the marking format set forth in 40 C.F.R. § 761.45.

38. Defendants have violated and continue to violate 40 C.F.R. § 761.40(a) and Sections 6(e) and 15 of TSCA, 15 U.S.C. § 2605(e), 2614, by failing to mark the PCB containers at the Holden facility in accordance with 40 C.F.R. § 761.45.

39. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

SIXTH CLAIM FOR RELIEF

40. Plaintiff realleges paragraph 1 through 15 above as if fully alleged below.

41. In the operation of the Holden facility, defendants "store for disposal" PCBs at concentrations of 50 ppm or greater and "PCB items" with PCB concentrations of 50 ppm or greater, as these terms are defined in 40 C.F.R. § 761.3.

42. Pursuant to 40 C.F.R. § 761.65(a) defendants have been required to remove from storage and properly dispose of (in accordance with 40 C.F.R. § 761, Subpart D) each PCB Article and/ or PCB Container within one year from the date when it was first placed into storage.

43. Defendants have violated and continue to violate 40 C.F.R. § 761.65(a) and Sections 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e), 2614, by failing to properly dispose of PCB Articles and/or PCB Containers within one year from the date when the PCB Articles and/or PCB Containers were first placed into storage.

44. For any such violation of TSCA, each defendant is jointly and severally liable for injunctive relief to prevent further violations, pursuant to Section 17 of TSCA, 15 U.S.C. § 2616.

SEVENTH CLAIM FOR RELIEF

45. Plaintiff realleges paragraphs 1 through 15 above as if fully alleged below.

46. Defendant Martha C. Rose Chemicals, Inc. has failed to pay the \$74,200 balance due on the civil penalty assessed in the TSCA administrative Consent Agreement and Final Order, Docket No. VII-84-T-331, entered on September 27, 1985.

47. Pursuant to Section 16(a)(4) of TSCA, 15 U.S.C. § 2615(a)(4), defendant Martha C. Rose Chemicals, Inc. is subject to the entry of a judgment in the amount of \$74,200 plus interest at currently prevailing rates.

WHEREFORE, the United States of America requests that the court grant the following relief:

A. Find each defendant in violation of Sections 6(e) and 15 of TSCA, 42 U.S.C. §§ 2605(e), 2614, and order each defendant jointly and severally to comply with all applicable requirements of Section 6(e) of TSCA;

B. Enter judgment against defendant Martha C. Rose Chemicals, Inc. in the amount of \$74,200 plus interest;

C. Award the United States of America its costs and attorney fees in this action; and,

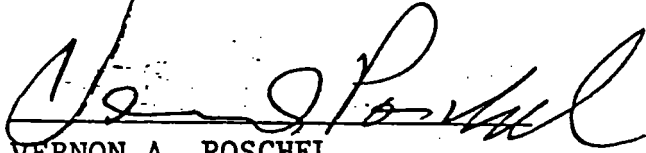
J. Order such further relief as this court may deem appropriate.

Respectfully submitted,

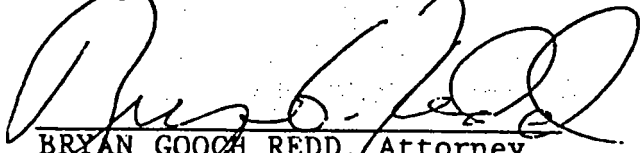


F. HENRY HABICHT II
Assistant Attorney General
Land and Natural Resources
Division

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Western District of Missouri



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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

Walter C. Carolan,
Martha C. Rose Chemicals, Inc.
American Steel Works, Inc.
and W. C. Carolan Company, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

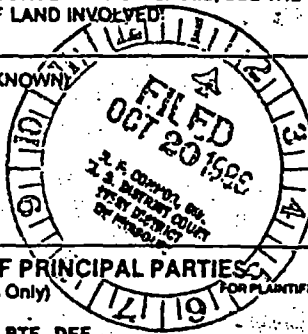
COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Jackson
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Vernon A. Poschel
Assistant United States Attorney
549 U. S. Courthouse
811 Grand Ave.,
Kansas City, MO 64106 (816) 374-3122

ATTORNEYS (IF KNOWN)



II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item-III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Injunctive relief pursuant to Sections 16 and 17 of the Toxic Substances Control Act, 15 U.S.C. §§2601, 2629 (1982 and Supp. 11 1984)

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medigay Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Food & Drug <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Emp. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 159 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HRA (1395H) <input type="checkbox"/> 862 Black Lung B22H <input type="checkbox"/> 863 DMIC (4059g) <input type="checkbox"/> 864 DMV (4059g) <input type="checkbox"/> 864 SSAD Title XVI <input type="checkbox"/> 865 RSI (4059g) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 400 State Readjustment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/ICC Ratecases <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence 28 USC 2255 <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE

DOCKET NUMBER

DATE

10/20/86

SIGNATURE OF ATTORNEY OF RECORD

Vernon A. Poschel